

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Media Broadcasting Corporation)	File Number EB-02-NF-019
Owner of Antenna Structure 1011741)	NAL/Acct.No.200232640005
Winston-Salem, North Carolina)	FRN 6756373

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 13, 2002

By the Enforcement Bureau, Norfolk Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Media Broadcasting Corporation ("Media"), owner of antenna structure number 1011741, willfully and repeatedly violated Sections 17.4(g) and 17.51 of the Commission's Rules ("Rules").¹ Media failed to post its antenna structure registration ("ASR") number and it failed to maintain specified lighting on its structure. We find that Media is apparently liable for forfeiture in the amount of twelve thousand dollars (\$12,000.00).

II. BACKGROUND

2. On January 22 and 23, 2002, an agent from the FCC's Norfolk Resident Agent Office ("Norfolk Office") observed Media's antenna structure number 1011741 used as part of the WAAA(AM) broadcast facility near Winston-Salem, North Carolina. On both dates, the agent noted the extinguishment of required lighting after sunset and the omission of a posted ASR number. The agent checked with the area Federal Aviation Administration's ("FAA") Flight Service Station on January 24, 2002, which had no report of any light outage for Media's antenna structure.²

3. On February 1, 2002, the Norfolk Office released a Notice of Violation to Media citing violation of Sections 17.4(g) and 17.51 of the Rules. Media responded to the Notice of Violation in a February 20, 2002 letter, stating that it was getting its structure registered. In the same letter, Media admitted that its structure was without lighting since July 2001.

¹ 47 C.F.R. §§ 17.4(g) and 17.51.

² Antenna structure owners are required to report immediately to the nearest FAA Flight Service Station any known extinguishment or malfunction of any top steady burning light or any flashing obstruction light if the problem cannot be corrected within 30 minutes. 47 C.F.R. § 17.48.

III. DISCUSSION

4. Section 17.4(g) of the Rules requires owners of registered antenna structures to display ASR numbers in a conspicuous place so that they are readily visible near the base of the antenna structure. On January 22 and 23, 2002, Media's antenna structure number 1011741 did not have its ASR number posted on or near the tower.

5. Section 17.51 of the Rules requires owners of antenna structures to exhibit lighting specified in FCC Form 854R from sunset to sunrise. Media's antenna structure number 1011741 was required to exhibit red obstruction lights from sunset to sunrise. On January 22 and 23, 2002, Media's antenna structure number 1011741 was observed between sunset and sunrise with no lights exhibited. As of January 24, 2002, no report of any light outage was received by the FAA for Media's antenna structure.

6. Based on the evidence before us, we find that Media repeatedly³ and willfully⁴ violated Sections 17.4(g) and 17.51 of the Rules by failing to display its ASR number and exhibit prescribed lighting.

7. Pursuant to Section 1.80(b)(4) of the Rules, the base forfeiture amount for failure to comply with prescribed lighting is \$10,000.⁵ The Rules do not establish a base forfeiture amount for failure to post the ASR number.⁶ The Commission has determined, however, that an appropriate base forfeiture amount for failure to post the ASR number is \$2,000 per violation.⁷ In assessing the monetary forfeiture amount we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and

³ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 47 C.F.R. § 1.80(b)(4)

⁶ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"), 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999). The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

⁷ *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

other such matters as justice may require.⁸ Considering the entire record and applying the statutory factors listed above, this case warrants a \$12,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁹ and Sections 0.111, 0.311 and 1.80 of the Rules,¹⁰ Media is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of twelve thousand dollars (\$12,000.00) for willful and repeated violation of Sections 17.4(g) and 17.51 of the Rules.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Media SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, IL 60673-7482. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, D.C. 20554.¹¹ Payment must note the “FRN” and the “NAL/Acct. No.” cited in the letterhead.

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE “NAL/Acct. No.” and “FRN” cited in the letterhead.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹¹ See 47 C.F.R. § 1.1914.

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Media Broadcasting Corporation; POB 11197; Winston-Salem, NC 27116-1197.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Husnay
Resident Agent, Enforcement Bureau

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